



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 22, 2004

Mr. David Caylor  
City Attorney  
City of Irving  
825 West Irving Boulevard  
Irving, Texas 75060

OR2004-0488

Dear Mr. Caylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194838.

The City of Irving (the "city") received a request for information relating to the locations of buried utilities within a 500-foot radius of the property at a specified address. You inform us that the city is releasing some of the requested information. You believe that other responsive information may implicate the proprietary interests of third parties. You inform us that you have notified utility companies whose interests may be implicated of their right to submit arguments to this office as to why the information at issue should not be released.<sup>1</sup> You also have submitted the rest of the responsive information. We received arguments from attorneys for TXU Gas Company ("TXU"). We have considered all of the submitted arguments and have reviewed the submitted information.

We first note that an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, we have received no correspondence from AT&T, Comcast, Looking Glass Networks, MCI, McLeod USA Communications, Oncor Gas, Oncor Power, Qwest Communications, Touch America, Verizon, or Xspedius. Thus, none of these parties has demonstrated that any of the submitted information is confidential or proprietary. *See* Gov't Code §§ 552.101, .110; Open Records Decision

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<sup>1</sup>*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances).

Nos. 552 at 5 (1990), 661 at 5-6 (1999). Therefore, the information that relates to these parties must be released.

TXU has submitted arguments under section 552.101 of the Government Code. This section excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information that another statute makes confidential. TXU contends that responsive information that TXU submitted to the city is confidential under section 418.181 of the Government Code. Through the passage of House Bill 9, the Seventy-eighth Legislature added sections 418.176 through 418.182 to chapter 418 of the Government Code. These newly enacted provisions make certain information related to terrorism confidential.

Section 418.181 of the Government Code provides as follows:

**Sec. 418.181. CONFIDENTIALITY OF CERTAIN INFORMATION  
RELATING TO CRITICAL INFRASTRUCTURE.**

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

Act of June 2, 2003, 78th Leg., R.S., ch. 1312, § 3, 2003 Tex. Sess. Law Serv. 4814 (Vernon) (to be codified at Gov't Code § 418.181); *see generally id.*, ch. 1312, § 1, 2003 Tex. Sess. Laws Serv. 4809 (Vernon) (to be codified at Gov't Code § 421.001) (defining "critical infrastructure" to "include[] all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation"). The fact that information may relate to a governmental body's security measures does not make the information *per se* confidential under House Bill 9. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a claim under one of the confidentiality provisions enacted by House Bill 9 must be accompanied by an adequate explanation of how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

TXU states that the submitted information relates to its gas facilities in the vicinity of the specified address. Although TXU expresses concern that its information might potentially reveal particular vulnerabilities of critical infrastructure, this office is informed that this type of information has been and remains available to the public, both commercially and from the Railroad Commission of Texas. Accordingly, and having considered the submitted arguments and reviewed the submitted information, we conclude that it has not been

demonstrated that any information relating to TXU is confidential under section 418.181 of the Government Code. Thus, the city may not withhold any submitted information that relates to TXU under section 552.101 of the Government Code. Thus, that information must also be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

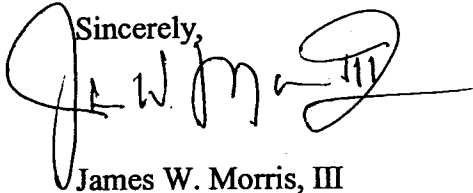
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,  


James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 194838

Enc: Submitted documents

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OTHER THIRD PARTIES